

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 24th day of August, two thousand seven.

PRESENT:

HON. JON O. NEWMAN,
HON. JOSÉ A. CABRANES,
HON. PETER W. HALL,
Circuit Judges.

UMARU BARRIE,
Petitioner,

v.

06-5269-ag
NAC

ALBERTO GONZALES, ATTORNEY GENERAL,
Respondent.

FOR PETITIONER: Matthew J. Harris, New York, N.Y.

FOR RESPONDENT: Anna Mills Wagoner, U.S. Atty. for the
Middle District of North Carolina,

**Cheryl T. Sloan, Asst. U.S. Atty.,
Greensboro, North Carolina.**

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals ("BIA"), it is hereby ORDERED, ADJUDGED, AND DECREED, that the petition for review is DISMISSED in part and DENIED in part.

Petitioner Umaru Barrie, a native and citizen of Sierra Leone, seeks review of an October 16, 2006 order of the BIA affirming the May 26, 2005 decision of Immigration Judge ("IJ") Joanna Miller Bukszpan pretermittting petitioner's application for asylum and denying his application for withholding of removal and relief under the Convention Against Torture ("CAT"). In Re Umaru Barrie, No. A79 301 437 (B.I.A. Oct. 16, 2006), aff'g No. A79 301 437 (Immig. Ct. N.Y. City May 26, 2005). We assume the parties' familiarity with the underlying facts and procedural history of the case.

As a preliminary matter, although Barrie asserts his eligibility for asylum, we lack jurisdiction to review this claim. The Immigration and Nationality Act states, in pertinent part, that: "[n]o court shall have jurisdiction to review any determination of the Attorney General," concerning the timeliness of an alien's application for asylum, see 8 U.S.C. § 1158(a)(2)(B), (a)(3), except to the extent that he raises constitutional claims or "questions of law." 8 U.S.C. § 1252(a)(2)(D); Xiao Ji Chen v. U.S. Dep't of Justice, 471 F.3d 315, 326-27 (2d Cir. 2006). Barrie does not raise any challenge to the agency's one-year bar finding in his brief to this Court. Thus, we are without jurisdiction to consider the denial of Barrie's asylum claim and dismiss the petition for review to that extent. 8 U.S.C. § 1158(a)(3).

We may, however, review the agency's denial of Barrie's withholding of removal claim.¹ Where, as here, the BIA adopts the decision of the IJ and supplements it, this Court reviews the decision of the IJ as supplemented by the BIA. See Yu Yin Yang v. Gonzales, 431 F.3d 84, 85 (2d Cir. 2005). In considering Barrie's withholding of removal claim, we review the agency's factual findings under the substantial evidence standard, treating them as "conclusive unless any reasonable

¹We deem Barrie's CAT claim abandoned since he does not raise any challenge to it in his brief. Jian Wen Wang v. BCIS, 437 F.3d 276, 278 (2d Cir. 2006).

adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B); see, e.g., Zhou Yun Zhang v. INS, 386 F.3d 66, 73 & n.7 (2d Cir. 2004). However, we will vacate and remand for new findings if the agency's reasoning or its fact-finding process was sufficiently flawed. Cao He Lin v. U.S. Dep't of Justice, 428 F.3d 391, 406 (2d Cir. 2005).

It appears that the BIA may have misconstrued the IJ's decision regarding her changed country conditions finding. In her decision, the IJ did not consider whether the government had rebutted any presumption of a clear probability of persecution, pursuant to 8 C.F.R. § 208.16(b)(1). Indeed, she found that Barrie did not suffer persecution in Sierra Leone. Rather, the IJ relied on the country conditions evidence in the record to hold that Barrie did not meet his burden of proof for his withholding of removal claim. The BIA's decision, however, construes the IJ's decision as having found that Barrie established past persecution and that the government had rebutted the presumption of a clear probability of persecution by establishing a fundamental change in circumstances.

However, any error in this respect is harmless and remand is not required. See Xiao Ji Chen v. U.S. Dep't of Justice, 471 F.3d 315, 338-40 (2d Cir. 2006). In their briefs, both parties have addressed the changed country conditions finding on the apparent assumption that Barrie had established past persecution. Accordingly, we presume past persecution and address whether the agency was correct that there has been a fundamental change in circumstances in Sierra Leone such that Barrie's presumptively reasonable fear of returning there had been rebutted. We conclude that the agency's country conditions finding is supported by substantial evidence and a sufficient ground for denying Barrie's withholding of removal claim.

By Barrie's own admission, the political party he feared is no longer in power, and the Sierra Leone government is run by President Ahmed Tejan Kabbah and the Sierra Leone People's Party ("SLPP"), the party to which Barrie belonged. According to the 2004 U.S. State Department Human Rights Report in the record, the SLPP also holds a majority of the seats in Parliament. The report also indicates that the Sierra Leone government "generally respected the human rights of its citizens," and notes that, during the period covered by the report, there was no evidence of politically motivated

killings or disappearances. Although the report indicates some ongoing violence in Sierra Leone, it does not indicate that individuals who supported the government, or President Kabbah, were subject to that violence. The other recent documents in the record similarly describe the situation in Sierra Leone, but provide no indication that Barrie, a member of the SLPP, would face persecution upon return to Sierra Leone. That the record describes general civil unrest in Sierra Leone is an insufficient basis for this Court to conclude that the agency erred in denying Barrie's withholding of removal claim. See Melgar de Torres v. Reno, 191 F.3d 307, 314 n.3 (2d Cir. 1999); Matter of Sanchez and Escobar, 19 I. & N. Dec. 276 (BIA 1985). Because substantial evidence supports the agency's conclusion that there has been a fundamental change in circumstances in Sierra Leone, we need not reach the agency's adverse credibility determination.

For the foregoing reasons, the petition for review is DISMISSED in part and DENIED in part. Having completed our review, any stay of removal that the Court previously granted in this petition is VACATED, and any pending motion for a stay of removal in this petition is DISMISSED as moot. Any pending request for oral argument in this petition is DENIED in accordance with Federal Rule of Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: _____
Olivia M. George, Deputy Clerk